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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WALTER MCWHORTER III,

Defendant and Appellant.

E050042

(Super.Ct.No. INF065073)

OPINION

APPEAL from the Superior Court of Riverside County. Jorge C. Hernandez,
Judge. Affirmed.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

An information charged defendant and appellant Walter McWhorter III with second degree burglary under Penal Code section 459¹ (count 1), and petty theft with a prior burglary conviction under sections 484 and 666 (count 2). The information also alleged two prior felony strike convictions and two prior prison terms.

Under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, defendant moved to strike the prior felony strike allegations. The trial court granted the motion as to one of the strikes and stated the reasons on the record, which appear in the minutes.

Pursuant to a written plea agreement, defendant plead guilty to both substantive offenses and admitted the remaining prior felony strike allegation and both prior prison term allegations. In exchange, the stipulated prison term was for eight years.

Following the plea, defendant requested immediate sentencing and the court imposed the agreed-upon prison term of eight years, consisting of the upper term of three years for burglary, doubled under the three strikes law, plus two, one-year prior prison term enhancements. The court stayed punishment on count 2 under section 654. At sentencing, the court delegated determination of presentence custody credits to the

¹ All further statutory references will be to the Penal Code unless otherwise indicated.

probation department; defendant was committed to prison with no presentence custody credits awarded.

Defendant filed a timely notice of appeal challenging the sentence or other matters occurring after the plea.

During the appeal, on June 24, 2010, the trial court granted defendant presentence custody credits of 237 actual days, plus 118 days under section 4019, for a total of 355 days.

II

STATEMENT OF FACTS

According to the information, on April 1, 2009, defendant entered a K-Mart store in Desert Hot Springs with the intent to commit theft (count 1), and on the same date, he committed theft from the K-Mart store, having previously been convicted of a burglary (count 2).

III

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

IV

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ King
J.